TAB 2

State of California
DEPARTMENT OF TRANSPORTATION

California State Transportation Agency

Memorandum

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: October 8, 2014

Reference No.: 2.4a.(1)
Action Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Brent L. Green, Chief
Division of Right of Way and
Land Surveys

Subject: **RESOLUTION OF NECESSITY – APPEARANCE**

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity (Resolution) C-21274 summarized on the following page. This Resolution is for establishing electrical service on the State Route 99 in District 6 in the city of Fresno, county of Fresno.

ISSUE:

Prior to initiating Eminent Domain proceedings to acquire needed Right of Way for a programmed project, the Commission must first adopt a Resolution, stipulating specific findings identified under Section 1245.230 of the Code of Civil Procedure, which are:

1. The public interest and necessity require the proposed project.
2. The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. This property is necessary for the proposed project.
4. An offer to acquire the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

In this case, the property owner is contesting the Resolution and has requested a written appearance before the Commission. At the request of the property owner, objections to the Resolution have been submitted in writing to be made part of the official record of the Commission meeting, in lieu of a personal appearance before the Commission. The owner's objections are included as Attachment A. The Department's responses to the owner's objections are contained in Attachment B.

BACKGROUND:

Discussions have taken place with the owner, who has been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which the owner may subsequently be entitled. Adoption of the Resolution will not interrupt the Department's efforts to secure an equitable settlement. In accordance with statutory requirements, the owner has been advised that the Department is requesting the Resolution at the Commission's October 8, 2014 meeting. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-21274 – Wer-Stan Associates, a General Partnership
06-Fre99-PM 16.76 - Parcel 87048-1 - EA 0G2109.
Right of Way Certification Date: 09/05/14; Ready To List Date: 01/02/15. Conventional highway – Install service pedestal. Authorizes condemnation of a permanent easement for utility purposes. Located in the city of Fresno at State Route 99 near the intersection of Cedar Avenue. Assessor Parcel Number 330-060-51.

Attachments:
Attachment A - Owners Written Objections dated July 24, 2014
Attachment B – Department Response dated August 11, 2014
Attachment C – Fact Sheet
Exhibits A and B - Maps

WSA
WER-STAN ASSOCIATES L.P.
P.O. BOX 10126 • FRESNO, CA 93745-0126 • OFFICE: (559) 281-0424 • FAX: (559) 841-2959

JULY 24, 2014

RECD BY CTC
JUL 28 2014

Executive Director
California Transportation Commission
P.O. Box 942873
Mail Station 52
Sacramento, Ca 94273-0001

Forwarded To: Right of way
Copied To: Stephen Marter

Re: 06-Fre-99-PM 16.76
Project #0600020474
Parcel 87048-1

Gentlemen:

This transmittal shall constitute Werstan Associates LP written response to the pending condemnation proceedings for the above captioned parcel.

If your contemplated action is to acquire a permanent easement, Werstan Associates would have no objection to such taking subject to the following conditions:

1-Corners of created parcel shall be monumented.
2-Created parcel shall remain and maintained free of deleterious materials.
3- Consideration shall be of equivalent market value.

If the Commission's contemplated action is within the statutory powers under eminent domain for taking in fee

ATTACHMENT A

title Werstan Associates would require the following conditions be associated with such "involuntary sale".

1-Department of Transportation be responsible for all costs of surveys and recordation of parcel maps associated with the created parcel.

2-Corners of the created parcel shall be monumented.

3-Created parcel shall remain and maintained free of deleterious materials.

4- Consideration shall be of equivalent market value.

5- Werstan Associates shall be reimbursed all costs and expenses associated with accounting fees for determining the capital gain tax consequences. (Note opinions of two CPA accounting firms confirm that an "involuntary sale" would be subject to capital gain tax. Since this parcel was included in a composite purchase of several parcels and in a property exchange, and many improvements during the years, ferreting out the cost basis for the determination of capital gain tax would be substantial due to the complexities for this calculation. Estimates have totaled several hundred dollars for these calculations. Note enclosure.)

Should the Commission have further inquiry or question please direct same to the undersigned at the letterhead address or call 559 281-0424.

Yours truly,

John S. Stanfield

John S. Stanfield
Managing General Partner
Werstan Associates, LP

DEPARTMENT OF TRANSPORTATION
DISTRICT 6
855 M STREET, SUITE 200
FRESNO, CA 93721-2716
PHONE (559) 445-6896
FAX (559) 445-6118
TTY 711
www.dot.ca.gov

Serious drought.
Help save water!

August 11, 2014

Mr. John S. Stanfield
Managing General Partner
Werstan Associates, LP
P.O. Box 10126
Fresno, Ca 93745-0126

06-FRE-99-P.M. 16.76
Proj. ID: 0600020474
Parcel No.: 87048
APN: 330-06-051
Grantor: Wer-Stan Associates, A General Partnership

Re: **Response to Objection to Proposed Adoption of Resolution of Necessity for Acquisition of Real Property Identified as Caltrans Parcel No. 87048-1**

Dear Mr. Stanfield:

This letter is in response to your letter dated July 24, 2014 addressed to the Executive Director of the California Transportation Commission (the "Commission") for the property located at Cedar Avenue Electrical Service (the "Property").

Your letter addressed specific concerns and objections to the Commission's proposed action on several grounds regarding the above referenced parcel and as requested your letter will be submitted to the Commission in lieu of a personal appearance and will be part of the official record presented to the Commission at its October 8 & 9, 2014 meeting to be held in Pasadena, California.

The following is the State of California, Department of Transportation's ("Department") response to the concerns and objections set forth in your letter:

1. If your contemplated Action is to acquire a permanent easement, Werstan Associates would have no objection to such taking subject to the following Conditions:

The Department only acquires a utility easement

Corners of created parcel shall be monumented.

Monumention is not a requirement for recording and transferring of a real property rights. Monuments are recorded, showing a deed interpretation which would be relied on by other surveyors. The Department would be adding a new record and possibly defining a side line of the property. It is not a requirement of Department Surveying on this parcel. Doing so may constitute a gift of public funds. We have offered to stake the Aerial Easement area and to provide you with any related maps and information.

ATTACHMENT B

Created parcel shall remain and maintained free of deleterious materials.

Department cannot be solely held responsible for maintaining the parcel free of deleterious materials since this area is also used by other easement holders. The purpose of parcel is to get overhead PG&E electrical service from its existing pole. No construction activity by Department will take place on this parcel as this is an Aerial Easement only.

Consideration shall be of equiva'ent market value.

The fair market value for an Aerial Easement on this 10 feet by 10 feet area has been established by a fair market appraisal on January 7, 2014. A copy of Department's appraisal had been provided at the time of first written offer. The value of this area has been completed taking into consideration encumbrances by PG&E and a roadway easement. As we have previously discussed, you may obtain an independent appraisal and receive reimbursement from the Department for the cost of the appraisal up to $5,000.

2. If the Commission's contemplated action is within the statutory powers under eminent domain for taking in fee title Werstan Associates would required the following conditions to be associated with such "involuntary sale".

The Department has no intention to acquire this parcel in fee title; therefore, the following conditions would not be relevant.

> Department of Transportation be responsible for all costs of surveys and recordation of parcel maps associated with the created parcel.
> Corners of the created parcel shall be monumented.
> Created parcel shall remain and maintained free of deleterious materials.
> Consideration shall be of equivalent market value.
> Werstan Associates shall be reimbursed all costs and expenses associated with accounting fees for determining the capital gain tax consequences. (Note opinion of two CPA accounting firms confirm that an "involuntary sale" would be subject to capital gain tax. Since this parcel was included in a composite purchase and many improvements during the years, ferreting out the cost basis for the determination of capital gain tax would be substantial due to the complexities for this calculation. Estimates have totaled several hundred dollars for these calculations. Note enclosure.)

I hope you find our responses satisfactory. It is our goal to reach an amicable agreement. Proceeding with condemnation does not stop our negotiation. The offer still stands should you wish to consider.

If you have any questions, please feel free to contact Ruben A Perez at (559)-445-6216.

Sincerely,

Suzette E. Shellooe

SUZETTE SHELLOOE
Chief, Central Region
Right of Way

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA	06-Fre-99-PM 16.76 Expenditure Authorization 0G2109
Location:	State Route 99 in Fresno County in the city of Fresno
Limits:	From PM 16.7 to PM 16.7
Cost:	Programmed construction cost: $ 85,000 Current right of way cost estimate: $ 15, 000
Funding Source:	Minor B from SHOPP
Number of Lanes:	Existing: Three lanes each way NB and SB 99-Highway lighting and Sign illumination. Proposed: Unchanged - Electrical Work Only
Major Features:	Install new electrical service point and upgrade highway lighting.
Traffic:	Existing SR-99 (year 2012): 88,000 Annual Daily Traffic (ADT) Proposed: N/A

PARCEL DATA

Property Owner:	Wer-Stan Associates, a General Partnership
Parcel Location:	at State Route 99 near the intersection of Cedar Avenue, City of Fresno Assessor's Parcel Number 330-060-51
Present Use:	Heavy industrial. Zoned M-3
Area of Property:	132,858 Square Feet (SF)
Area Required:	Parcel 87048-1 - 100 SF - Utility Easement

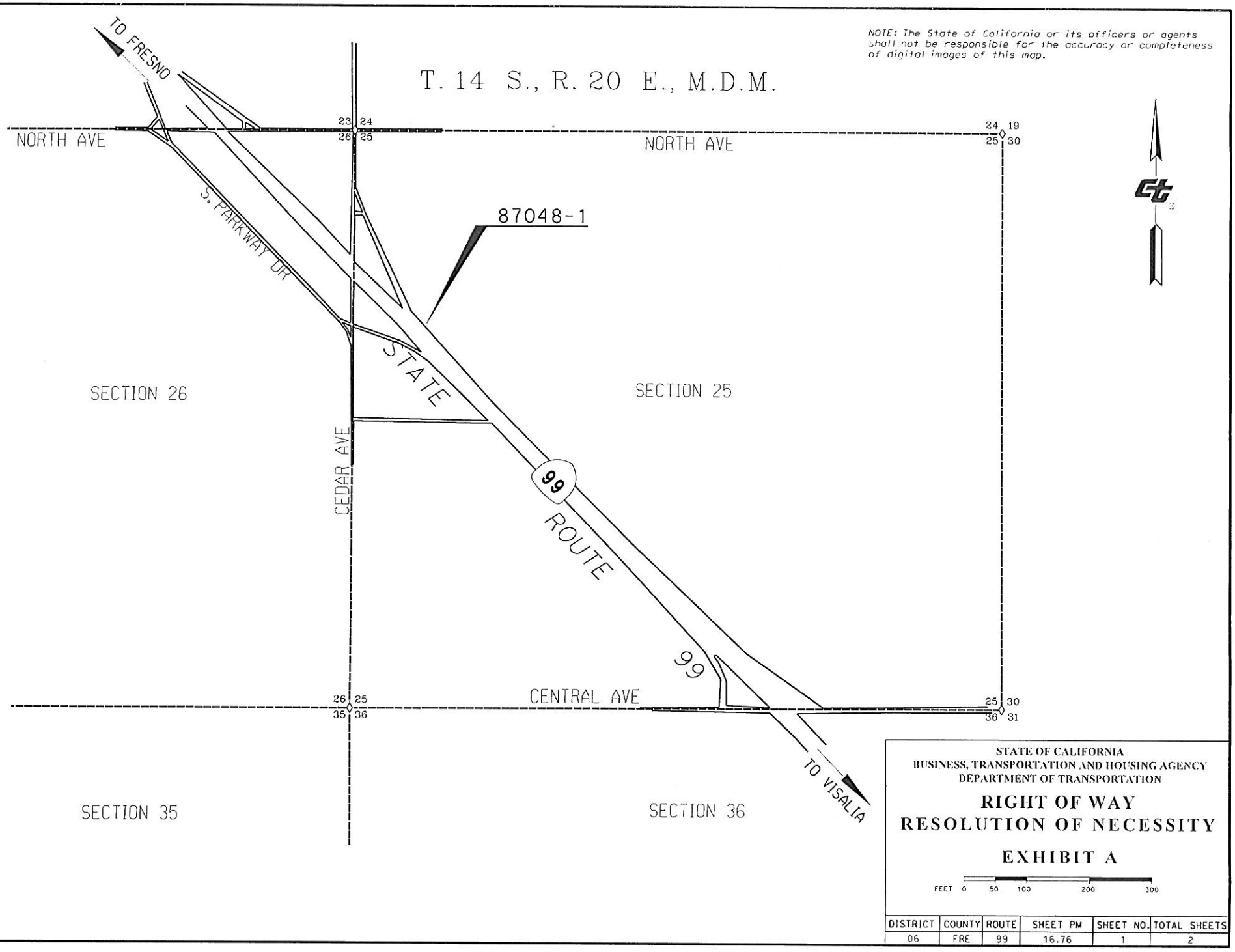


EXHIBIT A

Exhibit A

COUNTY OF FRESNO

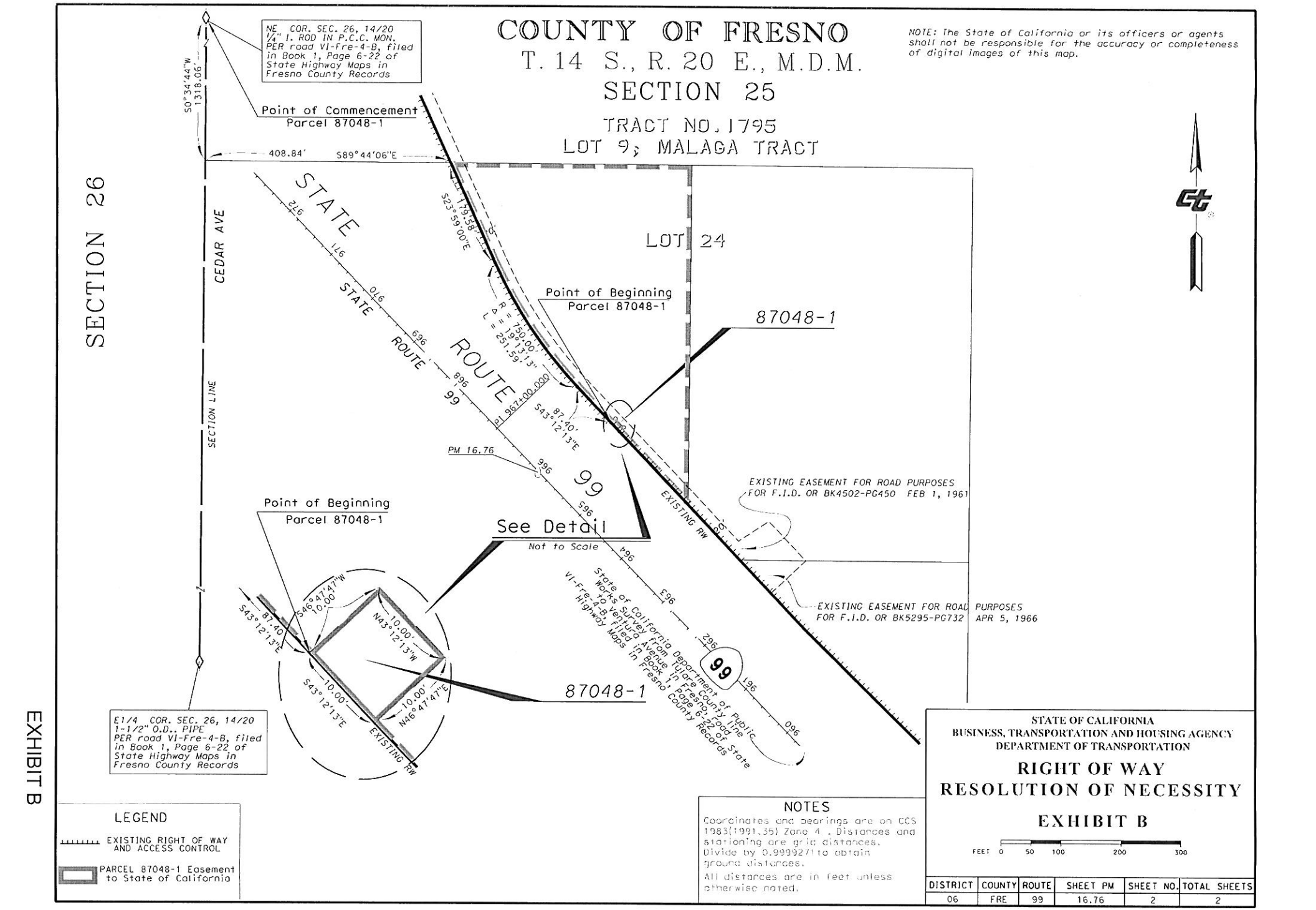
T. 14 S., R. 20 E., M.D.M.

SECTION 25

TRACT NO. 1795

LOT 9; MALAGA TRACT

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.



LEGEND

EXISTING RIGHT OF WAY AND ACCESS CONTROL

PARCEL 87048-1 Easement to State of California

NOTES

Coordinates and bearings are on CCS 1983(1991.35) Zone 4 . Distances and stationing are grid distances. Divide by 0.99992711 to obtain ground distances.

All distances are in feet unless otherwise noted.

STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY RESOLUTION OF NECESSITY

EXHIBIT B

FEET 0 50 100 200 300

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
06	FRE	99	16.76	2	2

EXHIBIT B

Exhibit B

TRANSPORTATION COMMISSION
RESOLUTION NO.

C-21274

CALIFORNIA TRANSPORTATION COMMISSION
RESOLUTION OF NECESSITY
TO ACQUIRE CERTAIN REAL PROPERTY
OR INTEREST IN REAL PROPERTY BY EMINENT DOMAIN
HIGHWAY 06-Fre-99-PM 16.76 PARCEL 87048-1
OWNER: Wer-Stan Associates, a General Partnership

Resolved by the California Transportation Commission after notice (and hearing) pursuant to Code of Civil Procedure Section 1245.235 that it finds and determines and hereby declares that:

The hereinafter described real property is necessary for State Highway purposes and is to be acquired by eminent domain pursuant to Streets and Highways Code Section 102;

The public interest and necessity require the proposed public project, namely a State highway;

The proposed project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;

The property sought to be acquired and described by this resolution is necessary for the public project;

The offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record; and be it further

RESOLVED by this Commission that the Department of Transportation be and said Department is hereby authorized and empowered;

APPROVED AS TO FORM AND PROCEDURE

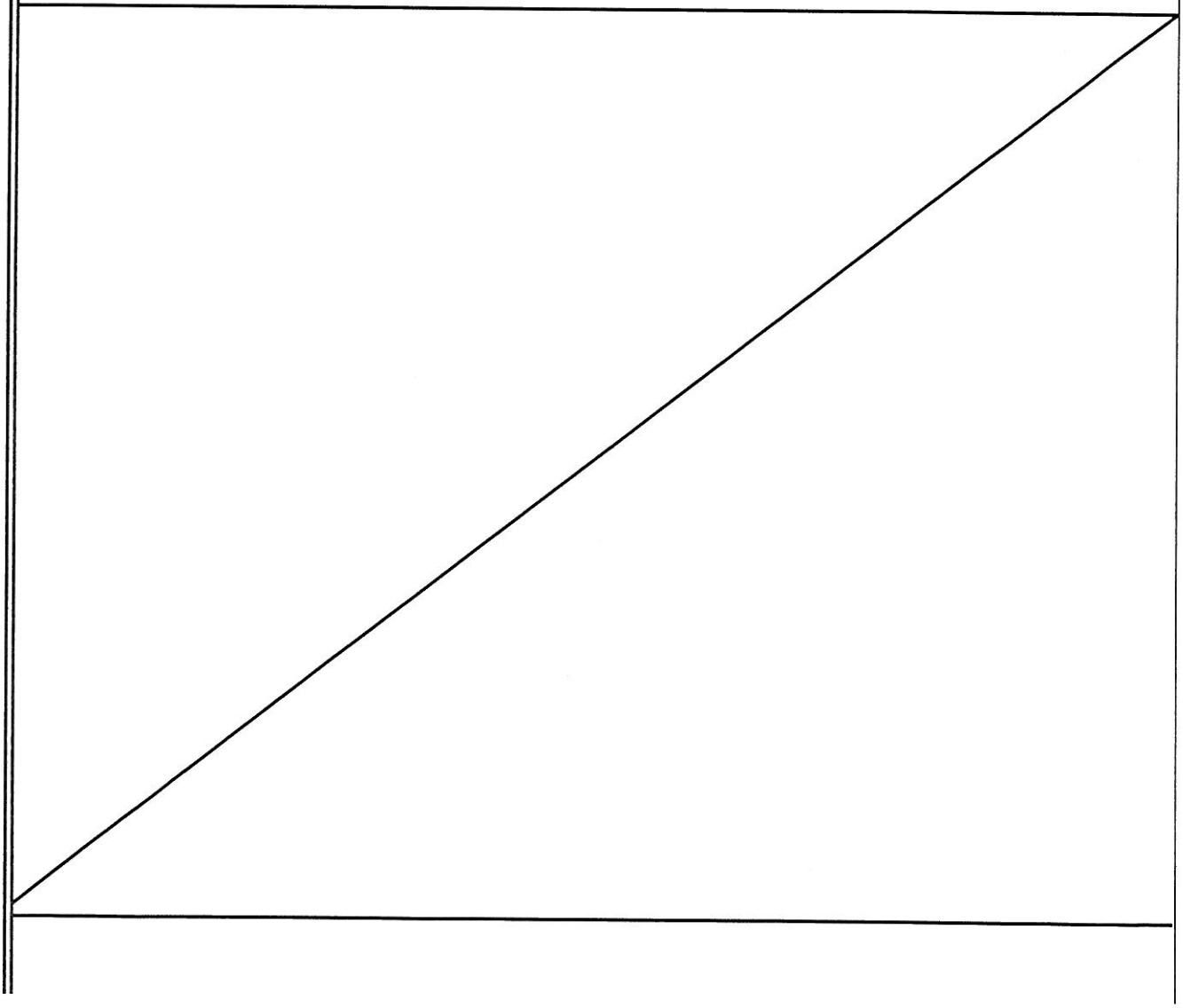
Attorney, Department of Transportation

APPROVAL RECOMMENDED

DIVISION OF RIGHT OF WAY

To acquire, in the name of the People of the State of California, in fee simple absolute, unless a lesser estate is hereinafter expressly described, the said hereinafter described real property, or interests in real property, by condemnation proceeding or proceedings in accordance with the provisions of the Streets and Highways Code, Code of Civil Procedure and of the Constitution of California relating to eminent domain;

The real property or interests in real property, which the Department of Transportation is by this resolution authorized to acquire, is situated in the County of Fresno, State of California, Highway 06-Fre-99 and described as follows:



STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

TITLE SHEET
(Resolution of Necessity Description)

District	County	Route	Post Mile
06	FRE	99	16.76

Project ID 0600000967

This document consists of this Title Sheet and the attached Legal Description of the parcel(s) listed below, consisting of 1 page.

Parcels in Legal Description:
87048-1

The attached real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature Kenneth Fritz
Professional Land Surveyor
Expires 12-31-2014

Date April 16, 2014

RW6-1(RONa)(New 07/2010)

Parcel 87048-1

An easement for utility purposes in favor of the State of California, in and to that portion of Lot 24 of Malaga Tract, in the City of Fresno, County of Fresno, State of California, according the map thereof recorded in Book 2 of Page 17 of Plats, Fresno County Official Records, more particularly described as follows:

COMMENCING at the Northwest corner of Section 25, Township 14 South, Range 20 East Mount Diablo Meridian and Baseline, shown on State of California Department of Public Works Survey from Tulare County line to Ventura Avenue in Fresno (road VI-Fre-4-B), now 06-FRE-99, filed in Book 1, Page 6-22 of State Highway Maps in Fresno County Records; THENCE (1) along the west line of said Section 25, South 00°34'44" West, 1318.06 feet to the westerly prolongation of the north line of said Lot 24; THENCE (2) easterly along the westerly prolongation and said north of line of Lot 24, South 89°44'06" East, 408.84 feet to a point on the easterly right of way of highway 99, as shown on said State of California Department of Public Works Survey; THENCE (3) southeasterly along said right of way line, South 23°59'00" East, 179.58 feet; THENCE (4) continuing along said right of way line, southeasterly along a tangent curve concave northeasterly with a radius of 750 feet, through an angle 19°13'13", an arc distance of 251.59 feet; THENCE (5) South 43°12'13" East along said right of way line, 87.40 feet to the TRUE POINT OF BEGINNING; THENCE (6) continuing along said right of way line, South 43°12'13" East, 10.00 feet; THENCE (7) departing from said right of way line, North 46°47'47" East, 10.00 feet; THENCE (8) North 43°12'13" West, 10.00 feet; THENCE (9) South 46°47'47" West, 10.00 feet to the TRUE POINT OF BEGINNING.

The bearings and distances used in this description are on the California Coordinate System of 1927, Zone 4. Multiply ground distances by 0.9999271 to obtain grid distances.